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Supreme Court of the United States

OCTOBER TERM, 1962.

No. 669

JOHN F. ISELIN and JOAN B. ISELIN,
Petitioners,

versus

LESTER J. MENG, LESTER J. MENG, JR. and JAMES C. MENG,
Respondents.

PETITION OF JOHN F. ISELIN AND JOAN B. ISELIN, FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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SUPREME COURT OF THE UNITED STATES.

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JOHN F. ISELIN and JOAN B. ISELIN,
Petitioners,

versus

LESTER J. MENG, LESTER J. MENG, JR. and JAMES C. MENG,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

The Petitioners herein, John F. Iselin and Joan B. Iselin, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled case on August 24, 1962.

CITATION TO OPINION BELOW.

The opinion of the United States Court of Appeals for the Fifth Circuit, dated August 24, 1962, is not yet reported. A copy of that opinion is attached hereto as Appendix "A".

JURISDICTION.

The judgment of the United States Court of Appeals for the Fifth Circuit affirming the District Court's judgment was entered on August 24, 1962, and is Appendix "B". The United States Court of Appeals for the Fifth Circuit denied a re-hearing on October 17, 1962, and is Appendix "C". The first stay of mandate was granted on October 24, 1962, and is Appendix "D"; and the second stay of mandate was granted on November 24, 1962, and is Appendix "E".

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED.

1.

Should not the lower court have permitted the Petitioners a trial on the merits?

2.

Did not the judgment of the United States Court of Appeals for the Fifth Circuit, affirming the judgment

of the District Court taking away Petitioners' vested property rights in these fractional sections and accretions violate and negative their rights under the federal constitution and amendments thereto?

3.

Should not the United States Court of Appeals for the Fifth Circuit have reversed said erroneous judgment of the District Court and remanded said cause for a trial on the merits?

4.

Did not the United States Court of Appeals for the Fifth Circuit err in sustaining and affirming the District Court's action in refusing Plaintiffs (Petitioners here) a trial on the merits in order that they might have an opportunity of showing that all past adverse decisions of the various courts were based on erroneous, inaccurate and false maps showing the land area as Diamond Point, Mississippi, when in reality and law it was Sargent's Point, Louisiana, and which action of the District Court was an abuse of judicial discretion and directly against the law and the evidence.

5.

Did not both lower courts grieviously err in not accepting and giving proper and overwhelming weight to the controlling pre-trial deposition of Mr. A. W. Iselin, appearing from page 109 thru page 183 of the record?

6.

Were not the Plaintiffs in the lower court (Petitioners here) entitled to a declaratory judgment on the pleadings and pre-trial depositon of Mr. A. W. Iselin?

STATEMENT OF THE CASE.

This suit was instituted in the United States District Court for the Western District of Louisiana, Monroe Division, by the filing of Plaintiffs' petition for declaratory relief (R. P. 1 et seq.). The Petition shows that the Plaintiffs are residents and citizens of the State of Indiana; and that the Defendants are residents and citizens of Natchez, Adams County, Mississippi; and legal process was had on all of the Defendants; that the value of the lands involved is far in excess of the statutory amount of $10,000.00.

Plaintiffs in their Petition set forth that they are the owners in fee simple of certain fractional sections of land, with accretions thereto, in Madison Parish, Louisiana, and which are set forth in detail in Plaintiffs' Petition (R. P. 1 et seq.); and all of which said lands have been in legal and physical possession of the Plaintiffs and Petitioners and their predecessors in title since title was divested from the United States.

And the original Petition additionally sets forth that the Defendants have illegally taken possession of said lands and refuse to surrender possession thereof to

Plaintiffs; and the Plaintiffs pray for the pronouncement by the District Court of a Declaratory judgment declaring Plaintiffs the legal owners in fee of the lands in question.

The District Court, without a trial on the merits, dismissed Plaintiffs' Petition, and which action was affirmed by the United States Court of Appeals for the Fifth Circuit.

REASONS FOR GRANTING THE WRIT.

The United States Court of Appeals for the Fifth Circuit, has herein decided a case involving important principals of law in the federal courts in direct conflict with the rules and decisions governing these principles, as enunciated by the United States Supreme Court, the several Circuit Courts of Appeals and District Courts.

Citations:

Iselin, et al. v. C. W. Hunter, 173 Fed. Rep. (2d), 388;

Crockett v. Wiedemann, D. C. Cal. 1941, 39 F. Supp. 266;

Consolidated Coal Co. v. Martin, C. C. A. Ky. 1940, 113 F 2d 813.

This Honorable Court in the case of *Polk Co. v. Flower*, 305 U. S. 5, S. Ct. 15, enunciated a rule equally applicable, with telling felicity, to the instant case, saying:

"We think the facts alleged in the bill were sufficient to entitle the plaintiffs to an opportunity

to prove their case, if they could, and that the court should not have undertaken to dispose of the constitutional issue, in advance of the opportunity."

And again in the case of *Ickes v. Fox*, 300 U.S. 82, 57 S. Ct. 412, this Court said:

"The motion to dismiss concedes the truth of these allegations; but even if they were denied, we should still be obliged to indulge the presumption in favor of the jurisdiction of the trial court, that respondents might be able to prove them."

CONCLUSION.

Wherefore, Petitioners respectfully pray that this Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit rendered and entered on August 24, 1962 in the said cause be granted, and the Writ of Certiorari issue forthwith.

Petitioners are filing herewith a certified transcript of record in said cause.

L. BRYAN DABNEY,
Attorney for Petitioners.

APPENDIX.

(A)

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 19,315.

JOHN F. ISELIN and JOAN B. ISELIN,
Appellants,

versus

LESTER J. MENG, LESTER J. MENG, JR. and JAMES C. MENG,
Appellees.

Appeal from the United States District Court for the Western District of Louisiana.

(August 24, 1962.)

Before JONES, WISDOM and GEWIN, Circuit Judges.

JONES, Circuit Judge: A tax deed was executed on April 30, 1949, to the appellants by the Sheriff of Madison Parish, Louisiana, describing and purporting to convey Fractional Sections 17, 19, 20, 21, 22 and 23, Township 14 North, Range 14 East, with an exception of land described in a deed to which reference was made. The land, so described, was adjacent to the Mississippi River which, at the situs of the land, was the boundary between Louisiana and Mississippi. The basic question,

which the appellants tenaciously seek to renew, has been the subject of prior consideration by the courts and in none of the cases has the position asserted by the appellants received any judicial sanction. The earliest action, of which we have knowledge, was brought by Albert W. Iselin and another in the Southern District of Mississippi, seeking a judicial declaration that they were the owners of the same land as is here involved. The claim of ownership was based upon a deraignment of title described land in Louisiana where, it was said, the property was known as the Woodyard of Sargent's Point. The claimants asserted that the land was originally in Louisiana but through accretion over a long period of time, it became submerged and reappeared as an island in the State of Mississippi. The Court was asked to enter a declaratory judgment that the plaintiffs' Louisiana claim of title was paramount to the defendant's Mississippi claim of title. The district court dismissed the complaint, and this Court affirmed, holding that the accretions inured to the riparian owner in Mississippi: *Iselin v. LaCoste*, 5th Cir. 1944, 139 F. 2d 887, cert. den. 321 U.S. 790, 64 S. Ct. 791, 88 L. Ed. 1080.

The unsuccessful plaintiffs in the litigation in the Southern District of Mississippi, upon the affirmance of the judgment against them, brought a similar suit against the same defendants in the Western District of Louisiana, seeking the same relief as to the same land. In this case the plaintiffs referred to the land as being known as Diamond Point in Warren County, Mississippi. In this suit the position was taken that there was not

any movement by erosion from Louisiana and accretion to Mississippi, but rather that the land became detached from the Louisiana side of the river by an avulsion caused by a shift in the main channel which placed the land upon the Mississippi River where it ultimately, by accretion, became attached to Sargent's Point upon the Mississippi mainland. The district court in Louisiana held that the district court of Mississippi had jurisdiction, and that its judgment was res judicata. *Iselin v. LaCoste*, D. C. W.D. La. 1944, 55 F. Supp. 977. This Court affirmed. *Iselin vs. LaCoste*, 5th Cir. 1945, 147 F. 2d 791.

At this juncture, chronologically, came the Supreme Court decision in 1955 in *State of Mississippi v. State of Louisiana*, 350 U.S. 5, 76 S. Ct. 29, 100 L.Ed. 6, reh. den. 350 U.S. 905, 76 S. Ct. 175, 100 L. Ed. 794. There it was held, in a case of original jurisdiction that the land at Diamond Point was eroded over a long period of time and disappeared and that Diamond Point Bar, on the Mississippi shore, was built up by accretions until it extended over the entire territory known as Diamond Island or Diamond Island Towhead.

John F. Iselin, the son of Albert W. Iselin and his wife, Joan B. Iselin, procured a tax deed in 1949 from the Sheriff of Madison Parish describing and purporting to convey the land herein involved by Sections, Township and Range in Madison Parish, Louisiana. These tax deed grantees, the same persons as the appellants in this appeal, brought an action against Lester J. Meng, Lester J. Meng, Jr. and James C. Meng, the

appellees here, and others, in the Southern District of Mississippi for a declaratory judgment that they owned the land in question. There the position was taken that at the time their tax deed issued the land was in Louisiana and their title was not lost when a change in boundary put the land in Mississippi. The district court resolved the issue against the Iselins and this Court affirmed. *Iselin v. Meng*, 6th Cir. 1959, 269 F. 345, cert. den. 361 U.S. 913, 80 S. Ct. 257, 4 L. Ed. 2d 183, reh. den. 361, U.S. 945, 80 S. Ct. 406, 4 L. Ed. 2d 365.

The appeal now before us brings for review the record of another unsuccessful effort to claim ownership of the same land as was involved in the prior litigation. In this action, brought in the district court of the Western District of Louisiana, it is claimed that the property is in Louisiana, and was cut off by an avulsion from the mainland of the State. The complaint states that, within the six months preceding the bringing of this suit, appellants have made a remarkable discovery as to the reason for the lack of success which they and their predecessors have previously had. This discovery is that in all of the prior litigation the "sheet-anchor" of their adversaries has been certain maps of the Mississippi River Commission showing the situs of the land as Diamond Point (Mississippi) when it should have been shown as Sargent's Point (Louisiana). The gist of this contention is that the maps which were before the Special Master in *State of Mississippi v. State of Louisiana* were wrong. To establish this contention the appellants took the deposition of Albert W. Iselin who testified that "The maps had

been changed from Sargent's Point to Diamond Point, and when the court looked at that map, supposing that the Mississippi River Commission, who made the maps, were reliable people, they, of course, decided and dismissed the case, and we didn't have a chance to testify to anything." The theory of an avulsion was once more asserted. The appellants' brief tells us that when Albert W. Iselin speaks, he speaks ex cathedra. In so speaking he says that the land involved "is erroneously and fraudulently called Diamond Point," Mississippi, rather than being described, as it should be as Sargent's Point, Louisiana. Mr. Iselin testified that:

> "In 1904 there was a 'cut-off' made, Killakranka 'cut-off'; and my understanding from the Mississippi vs. Louisiana case, where on pages 5 and 6 it says that where a 'cut-off' occurs the boundary—state boundary—remains in the deserted river bed, that is the 1904 deserted river bed; therefore, the state boundary line remained in the deserted river bed and didn't follow through the 'cut-off'—the Killakranka 'cut-off' in 1904. A boundary doesn't follow through a 'cut-off.'"

The maps, said Mr. Iselin, which refer to Diamond Point are wrong and had been changed from Sargent's Point.

The appellants insist that there should have been a hearing on the merits rather than being dismissed on the merits, that there are complex questions of law and fact and difficult interpretations of boundaries upon which they should have a day in court. The answer is that there has been a hearing on the merits, the

questions of law and fact have been decided and the interpretations of boundaries have been decided. In prior litigation, by which the appellants are bound, it has been determined that land claimed by them is in Mississippi and not in Louisiana, and that they acquired no title to the land by their tax deed. This was decided, and the references in the opinion and elsewhere to Diamond Point and Sargent's Point were merely descriptions of the areas and not decisive of the issues.

The Supreme Court, in *State of Mississippi v. State of Louisiana*, held that the land is in Mississippi. In our opinion in *Iselin v. Meng*, 269 F. 2d 345, 348, it was held that the litigations to titles over lands are bound by the Supreme Court's determination of boundaries between states. These decisions, the appellants say, are wrong. Their action here is a collateral attack upon the judgments in these cases. We do not agree, but in any event it can be said, as was said in one of the earlier Iselin cases:

> "From time immemorial the courts have held that a judgment, valid on its face, cannot, in the absence of fraud in its procurement, be collaterally attacked as to mere errors of irregularities committed by the court in the exercise of its jurisdiction or in the course of the proceedings even though errors and irregularities may appear on the face of the record." *Iselin v. LaCoste*, 147 F. 2d 741-794.

In different language this Court has thus expressed the same principle:

> "The doctrine of res judicata does not depend upon whether or not the prior judgment was right. It rests upon the finality of judgments as a matter of public policy, to the end that controversies once decided shall remain in repose." *Rubens v. Ellis*, 5th Cir. 1953, 202 F. 2d 415, 418.

The present suit is an attempt to relitigate questions decided, relitigated and again decided. The dismissal of the complaint by the district court was correct. Its judgment is affirmed.

(B)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

October Term, 1961.

No. 19,315.

D. C. DOCKET No. 7896 CIVIL
(MONROE)

JOHN F. ISELIN AND JOAN B. ISELIN,
Appellants,

vs.

LESTER J. MENG, LESTER J. MENG, JR. and JAMES C. MENG,
Appellees.

Appeal from the United States District Court for the Western District of Louisiana.

Before JONES, WISDOM and GEWIN, Circuit Judges.

JUDGMENT.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said

District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, John F. Iselin and Joan B. Iselin and the surety on the appeal bond herein United States Fidelity & Guaranty Company, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

Issued: August 24, 1962.

(C)

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 19,315.

JOHN F. ISELIN AND JOAN B. ISELIN,
Appellants,

versus

LESTER J. MENG, LESTER J. MENG, JR. and JAMES C. MENG,
Appellees.

Appeal from the United States District Court for the Western District of Louisiana.

(October 17, 1962.)

ON PETITION FOR REHEARING.

Before JONES, WISDOM and GEWIN, Circuit Judges.

PER CURIAM.

It is ordered that the petition for rehearing in the above entitled and number cause be, and it is hereby denied.

(D)

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 19,315.

JOHN F. ISELIN and JOAN B. ISELIN,
Appellants,

versus

LESTER J. MENG, LESTER J. MENG, JR. and JAMES C. MENG,
Appellees.

(First Stay of Mandate.)

On consideration of the application of the Appellants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition and record have been filed. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this

order, unless the above mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 24th day of October, 1962.

(S.) WARREN L. JONES,
United States Circuit Judge.

(Original filed October 24, 1962).

(E)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

No. 19,315.

JOHN F. ISELIN AND JOAN B. ISELIN,
Appellants,

versus

LESTER J. MENG, LESTER J. MENG, JR. and JAMES C. MENG,
Appellees.

(Second Stay of Mandate.)

On consideration of the application of the appellants in the above numbered and entitled cause for a further stay of the mandate of this Court therein, to enable appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States.

It is ordered that the issue of the mandate of this Court in said cause be and the same is further stayed to and including December 26, 1962, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned, there shall be filed with the clerk of this Court the certificate of the Clerk of the Supreme Court that certiorari petition and record have been filed. It is further ordered that the Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme

Court denying the writ, or upon the expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

(S.) WARREN L. JONES,
United States Circuit Judge.

(Dated) (Original Filed November 24, 1962).